

MINUTES OF THE CITY COUNCIL

SAN JOSÉ, CALIFORNIA

TUESDAY, JANUARY 15, 2008

The Council of the City of San José convened in regular session at 9:02 a.m. in the Council Chambers at City Hall.

Present: Council Members - Campos, Chirco, Chu, Constant, Cortese, Liccardo, Nguyen, Oliverio, Pyle, Williams; Reed.

Absent: Council Members - None.

Upon motion unanimously adopted, Council recessed at 9:04 a.m. to a Closed Session in Room W133, (A) Public Employee Performance Evaluation Pursuant to Government Code Section 54957: Title: City Attorney; Name: Rick Doyle; Title: City Clerk; Name: Lee Price; Title: Independent Police Auditor; Name: Barbara Attard; (B) to confer with Legal Counsel pursuant to Government Code Section 54956.9 subsection (a) with respect to existing litigation to consider the case of: (1) McGuire & Hester v. City, et al (and related cross actions); (2) People, et al. v. Dhillon, et al.; (3) Park v. City of San José.

By unanimous consent, Council recessed from the Closed Session at 10:45 a.m. and reconvened at 2:00 p.m. in the Council Chambers.

Present: Council Members - Campos, Chirco, Chu, Cortese, Liccardo, Nguyen, Oliverio, Pyle, Williams; Reed.

Absent: Council Members - Constant. (Excused)

INVOCATION

Pastor Brett Allen of Bethel Church of San José presented the Invocation. (District 1)

PLEDGE OF ALLEGIANCE

Mayor Reed led the Pledge of Allegiance.

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ORDERS OF THE DAY

Upon motion by Council Member Pyle, seconded by Council Member Campos and carried unanimously, the Orders of the Day and the Amended Agenda were approved, and Items 3.2 and 5.1 were deferred to January 29, 2008.

CEREMONIAL ITEMS

1.1 Presentation of a proclamation declaring January 20 through January 26, 2008 as Future City Week in the City of San José. (Williams/Chu) (Rules Committee referral 1/9/08)

Action: Mayor Reed and Council Members Williams and Chu recognized the week of January 20 through January 26, 2008 as Future City Week in the City of San José.

CONSENT CALENDAR

Upon motion by Council Member Pyle, seconded by Council Member Campos and carried unanimously, the Consent Calendar was approved and the below listed actions were taken as indicated. (10-0-1. Absent: Constant.)

2.2 Final adoption of ordinances.

- (a) **ORD. NO. 28228 – Adopting the Twenty-Third Amended Alum Rock Avenue Redevelopment Plan to include Fire Station #2 as a specific project; and making certain findings.**

Documents Filed: Proof of Publication of the title of Ordinance No. 28228 executed on January 11, 2008, submitted by the City Clerk.

Action: [Ordinance No. 28228](#) was adopted. (10-0-1. Absent: Constant.)

2.3 Report on bids and award of construction contract for Fire Main Replacement Project – Phase I to the low bidder, D&D Pipelines Inc., in the amount of \$292,550, and approval of a contingency in the amount of \$30,000. CEQA: Exempt, File No. PP07-144. (Environmental Services) (Deferred from 12/18/07 – Item 2.9)

Documents Filed: (1) Memorandum from Director of Environmental Services John Stufflebean, dated November 26, 2007, recommending acceptance of the report. (2) Letter from the Treatment Plant Advisory Committee, dated January 10, 2008, stating concurrence with the Staff recommendation.

2.3 (Cont'd.)

Action: The bids and award of a construction contract for the Fire Main Replacement Project – Phase I to the low bidder, D&D Pipelines Inc., in the amount of \$292,550, and approval of a contingency in the amount of \$30,000, was approved. (10-0-1. Absent: Constant.)

2.4 Request for an excused absence for Mayor Reed from the Regular Meeting of the Rules and Open Government Committee on December 12, 2007 due to Authorized City Business: Trip to Sacramento, CA for a meeting with the Governor. (Mayor) (Rules in-Lieu referral 01/02/08)

Documents Filed: Memorandum from Mayor Reed, dated December 21, 2007, requesting an absence due to authorized City business.

Action: The absence was excused. (10-0-1. Absent: Constant.)

2.5 Approval of the first amendment to the agreement with Allana Buick & Bers, Inc. for professional services related to the repair and modifications of the San José/Santa Clara Water Pollution Control Plant's Environmental Services Building, modifying the scope of services and increasing the compensation by \$276,695 for a total maximum amount not to exceed \$587,495; and extending the term of the agreement by twenty-four months from July 31, 2008 to July 31, 2010. CEQA: Not a Project. (Public Works/Environmental Services) (Deferred from 12/18/07 – Item 2.22)

Documents Filed: (1) Memorandum from Director of Public Works Katy Allen and Director of Environmental Services John Stufflebean, dated November 26, 2007, recommending approval of amendment to an agreement. (2) Letter from the Treatment Plant Advisory Committee, dated January 10, 2008, stating concurrence with the Staff recommendation.

Action: The first amendment to the agreement with Allana Buick & Bers, Inc. for professional services related to the repair and modifications of the San José/Santa Clara Water Pollution Control Plant's Environmental Services Building, modifying the scope of services and increasing the compensation by \$276,695 for a total maximum amount not to exceed \$587,495; and extending the term of the agreement by twenty-four months from July 31, 2008 to July 31, 2010, was approved. (10-0-1. Absent: Constant.)

- 2.6 (a) Approval of Contract Change Order #1 for reservoir structural repair and a contract time extension of 17 working days with Olympus & Associates, Inc., for the Villa Vista Reservoir Rehabilitation project, at an additional cost of \$51,727 to the City.**
- (b) Adopt the following Appropriation Ordinance amendments in the Water Utility Capital Fund (500):**
- (1) Increase the Villa Vista Reservoir Rehabilitation appropriation in the amount of \$77,000; and**

2.6 (2) Decrease the Forestwood Drive Main Replacement appropriation in the amount of \$77,000.

CEQA: Exempt, File No. PP07-148. Council District 8. (Environmental Services/City Manager's Office)

Documents Filed: Memorandum from Director of Environmental Services John Stufflebean and Acting Budget Director Jennifer A. Maguire, dated December 17, 2007, recommending approval of the contract change order #1 and adoption of appropriation ordinance amendments.

Action: The Contract Change Order #1 for reservoir structural repair and a contract time extension of 17 working days with Olympus & Associates, Inc., for the Villa Vista Reservoir Rehabilitation project, at an additional cost of \$51,727 to the City was approved, and [Ordinance No. 28229](#), entitled "An Ordinance of the City of San José Amending Ordinance No. 28071 to Appropriate Monies in the Water Utility Capital Fund for the Villa Vista Reservoir Rehabilitation Project; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption", was adopted. (10-0-1. Absent: Constant.)

2.7 Adoption of a resolution summarily vacating a portion of public right-of-way at the southeast corner of North King Road and Mabury Road (796 North King Road), recorded March 25, 1993 in Book M683, Page 1280 of Official Records, Office of the Recorder, County of Santa Clara, and reserving a public service easement over the entire area being vacated. CEQA: Exempt, File No. H04-047. Council District 5. (Public Works)

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated December 17, 2007, recommending adoption of a resolution.

Action: [Resolution No. 74211](#), entitled "A Resolution of the Council of the City of San José Summarily Vacating a Portion of Public Right-of-Way at the Southeast Corner of North King Road and Mabury Road (796 North King Road) and Reserving a Public Service Easement", was adopted. (10-0-1. Absent: Constant.)

**2.8 Approval of an ordinance to provide that the lowest cost medical plan for purposes of determining the portion of the medical insurance premiums to be paid from the Federated City Employees Retirement System and the Police and Fire Department Retirement Plan for retirees and their beneficiaries, from January 1, 2008, through December 31, 2008, is the Kaiser Plan (single or family coverage) that does not include the new co-payments, and making the ordinance retroactive to January 1, 2008. (City Attorney's Office)
(Rules Committee referral 1/9/08)**

2.8 (Cont'd.)

Documents Filed: (1) Memorandum from City Manager Debra Figone and City Attorney Doyle, dated December 17, 2007, recommending preparation of an ordinance to define lowest-cost plans for retiree health care. (2) Memorandum from the Board of Administration of the Police and Fire Department Plan, dated January 14, 2008, offering Board comments on the Proposed Ordinance Providing for an Alternative Allocation of Costs Providing Medical Insurance Coverage for Calendar Year 2008. (3) Letter from Bruce De Mers, President (Association of Retired San José Police Officers and Fire Fighters), dated January 15, 2008, regarding costs of maintaining the Kaiser plan without co-pays.

Action: [Ordinance No. 28230](#), entitled “An Ordinance of the City of San José Providing for an Alternative Allocation of Costs of Providing Medical Insurance Coverage for Calendar Year 2008”, was passed for publication. (10-0-1. Absent: Constant.)

2.9 **Request for excused absences for Council Member Constant from the Regular Meetings of the Rules and Open Government Committee on the following dates due to Authorized City Business: LAFCO Meetings:**

- (a) **January 9, 2008**
- (b) **February 6, 2008**
- (c) **March 5, 2008**
- (d) **April 16, 2008**
- (e) **May 7, 2008**
- (f) **June 4, 2008**
- (g) **July 2, 2008**
- (h) **August 6, 2008**
- (i) **October 1, 2008**
- (j) **December 3, 2008**

(Constant)

(Rules Committee referral 1/9/08)

Documents Filed: Memorandum from Council Member Constant, dated January 2, 2008, requesting excused absences due to authorized City business.

Action: The absences were excused. (10-0-1. Absent: Constant.)

2.10 **Request for an excused absence for Vice Mayor Cortese from the Closed Session on January 8, 2008 due to Authorized City Business: Realtors Meeting in San José, CA. (Cortese)**

(Rules Committee referral 1/9/08)

Documents Filed: Memorandum from Vice Mayor Cortese, dated January 2, 2008, requesting an excused absence due to authorized City business.

Action: The absence was excused. (10-0-1. Absent: Constant.)

- 2.11 Request for an excused absence for Council Member Liccardo from the Closed Session on January 8, 2008 due to unavoidable flight delay in return from travel. (Liccardo)**
(Rules Committee referral 1/9/08)

Documents Filed: Memorandum from Council Member Liccardo, dated January 8, 2008, requesting an excused absence due to an unavoidable flight delay in return from travel.

Action: The absence was excused. (10-0-1. Absent: Constant.)

END OF CONSENT CALENDAR

STRATEGIC SUPPORT SERVICES

City Manager Debra Figone announced the appointment of Noberto Duenas as Deputy City Manager and briefly summarized her information memorandum dated January 15, 2008 regarding new and unfunded General Fund initiatives.

Documents Filed: Memorandum from City Manager Debra Figone, dated January 15, 2008, providing an updated list of New and Unfunded General Fund Initiatives/Programs.

Action: No action taken.

- 3.2 Report of the Public Safety, Finance and Strategic Support Committee – December 20, 2007**
Council Member Nguyen, Chair

Action: Deferred to January 29, 2008 per Orders of the Day.

- 3.3**
- (a) Direction to the City Attorney to prepare an amendment to the City Charter to allow the City Council by majority vote to place Council Appointees on administrative leave for placement on the June 2008 Ballot.**
 - (b) Discussion of the California Elections Code recall process which allows voters to recall an official and elect his or her successor by a plurality vote in the same election, and direction to the City Attorney to prepare amendments to the Charter if the Council approves changes to the City of San Jose recall process consistent with the California Elections Code.**
 - (c) Discussion and direction on when to require a Member of the Council to abstain from participating in and voting on a matter before the City Council if to participate in the particular matter would create an appearance of bias.**
 - (d) Discussion of alternate City Council salary setting methods and direction to the City Attorney to prepare a Charter amendment if a change to the current method is approved.**
- (City Attorney)**

Action: Deferred to March 4, 2008 per Administration.

3.4 (See page 9)

3.5 Adoption of a resolution approving the Report of the Director of Finance on the Reimbursement of Cost for Sidewalk Repairs, confirming the assessments contained in the Report and directing the recording of liens on the property tax roll for the cost of sidewalk repairs. CEQA: Not a Project. (Finance)

Documents Filed: Memorandum from Director of Finance Scott P. Johnson, dated December 10, 2007, recommending adoption of a resolution.

Action: Upon motion by Vice Mayor Cortese, seconded by Council Member Pyle and carried unanimously, [Resolution No. 74213](#), entitled “A Resolution of the Council of the City of San José Accepting the Report of the Directors of Finance and Transportation on the Cost of Sidewalk Repairs, Confirming the Assessments Contained in the Report, and Directing the Recording of Liens”, was adopted. (10-0-1. Absent: Constant.)

COMMUNITY & ECONOMIC DEVELOPMENT

4.3 (a) Consent to the request of Farotte Construction, Inc. to be relieved of its low bid for the Santa Teresa Branch Library Project based upon a mistake in filling out the bid.
(b) Report on bids and award of contract for the Santa Teresa Branch Library Project to the lowest responsive bidder, BRCO Constructors, Inc., for the base bid and Add Alternates Nos. 1 through 6 in the total amount of \$8,876,000, and approval of a contingency in the amount of \$887,600.

CEQA: Exempt, File No. PP07-099. Council District: 2. (Public Works/Library)

Documents Filed: Memorandum from Director of Public Works Katy Allen and Library Director Jane Light, dated December 17, 2007, recommending acceptance of the report on bids and awards of the contract for the Santa Teresa Branch Library Project.

Action: Upon motion by Council Member Williams, seconded by Council Member Campos and carried unanimously, the request of Farotte Construction, Inc. to be relieved of its low bid was approved; and award of the contract for the Santa Teresa Branch Library Project to the lowest responsive bidder, BRCO Constructors, Inc., with related contingencies, was approved. (10-0-1. Absent: Constant.)

4.2 Adoption of a resolution:

(a) Overruling any and all objections to the 2007-2008 Hazardous Vegetation Commencement Report; and
(b) Directing the Santa Clara County Department of Agriculture and Resource Management to abate the seasonal and/or recurrent public nuisances on those properties identified in the Report pursuant to Chapter 9.12 of Title 9 of the San José Municipal Code and the Weed Abatement Agreement between the City of San José and the County of Santa Clara.

CEQA: Exempt, File No. PP06-196. (Planning, Building and Code Enforcement)

4.2 (Cont'd.)

Documents Filed: Memorandum from Director, Planning, Building and Code Enforcement, Joseph Horwedel, dated December 17, 2007, recommending adoption of a resolution.

Action: Upon motion by Council Member Pyle, seconded by Council Member Liccardo and carried unanimously, [Resolution No. 74214](#), entitled “A Resolution of the Council of the City of San José Overruling Objections to the 2007-2008 Hazardous Vegetation Commencement Report and Directing the Santa Clara County Department of Agriculture and Resource Management to Abate the Seasonal and/or Recurrent Public Nuisances on Those Properties Identified in the Report Pursuant to Chapter 9.12 of Title 9 of the San José Municipal Code and Weed Abatement Agreement Between the City of San José and the County of Santa Clara”, was adopted. (10-0-1. Absent: Constant.)

4.4 **Conduct a Public Hearing and approval of an ordinance to establish a combination Rule 20A and In-Lieu Fee (Rule 20B) Underground Utility District along Delmas Avenue from Santa Clara Street to Auzerais Avenue, Cahill Street from San Fernando Street to Santa Clara Street, San Fernando Street from Highway 87 to Cahill Street, Laurel Grove Lane from Cahill Light Rail Station to Bush Street, Cahill Park from Bush Street to Wilson Avenue, San Fernando Street from Wilson Avenue to 80 feet west of Wilson Street, Park Avenue from Highway 87 to Montgomery Street, and Auzerais Avenue from Bird Avenue to Highway 87. CEQA: Exempt, File No. PP07-218. Council District 3. (Public Works)**

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated December 17, 2007, recommending a Public Hearing and adoption of an ordinance.

Public Comment: Mayor Reed opened the public hearing. There was no testimony from the floor. Mayor Reed closed the public hearing.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Nguyen and carried unanimously, [Ordinance No. 28231](#), entitled “An Ordinance of the City of San José Establishing a Combination Rule 20A and In-Lieu Fee and Rule 20B Underground Utility District Along Delmas Avenue from Santa Clara Street to Auzerais Avenue, Cahill Street from San Fernando Street to Santa Clara Street, San Fernando Street from Highway 87 to Cahill Street, Laurel Grove Lane from Cahill Light Rail Station to Bush Street, Cahill Park from Bush Street to Wilson Avenue, San Fernando Street from Wilson Avenue to 80 West of Wilson Street, Park Avenue from Highway 87 to Montgomery Street, and Auzerais Avenue from Bird Avenue to Highway 87”, was passed for publication. (10-0-1. Absent: Constant.)

NEIGHBORHOOD SERVICES

5.1 Report of the Neighborhood Services and Education Committee – December 13, 2007 Council Member Chirco, Chair

Action: Deferred to January 29, 2008 per Orders of the Day.

The City Council recessed at 2:43 p.m. to attend a function at the Martin Luther King Library and reconvened in Council Chambers at 3:35 p.m.

STRATEGIC SUPPORT SERVICES

3.4 Adoption of a resolution approving a City Council Policy on Labor Negotiation Guidelines. CEQA: Not a Project. (City Manager's Office)

Documents Filed: (1) Memorandum from Mayor Reed, dated January 15, 2008, recommending approval of the draft Council Policy on labor negotiations with amendments as provided. (2) Letter from Tom Brim, President, Association of Building, Mechanical and Electrical Inspectors of the City of San José (ABMEI) regarding the City Manager's proposal regarding labor negotiation guidelines.

City Manager Debra Figone presented an overview of the draft policy on labor negotiations with the City's bargaining units. Council discussion followed regarding phrasing used in the draft Council Policy.

Motion: Council Member Liccardo moved to defer this item for two weeks to allow time for revisions to be made to the Policy. Vice Mayor Cortese seconded the motion.

Public Comments: Speaking in opposition to the guidelines as drafted were Tom Brim and Chris Brunner (ABMEI), Phaedra Ellis-Lamkins (South Bay Labor Council), James Adduci, Daniel Finn (OE-3 Members), Mary Follenweider (AEA IFPTE Local 21), Eric Larsen, Linda Dittes, and Yolanda Cruz (AFSCME MEF, Local 101), Randy Sekany (San José Fire Fighters), William Garbett, Ted Scarlett and Gay Gayle (CAMP).

Director of Employee Relations Alex Gurza responded to questions from Council and confirmed that the guidelines had been previously circulated to the labor alliance.

Action: On a call for the question, Item 3.4 was deferred to the Rules and Open Government Committee Meeting of January 30, 2008, with City Staff directed to circulate the draft policy as revised to the unions for review and comment.
(10-0-1. Absent: Constant.)

TRANSPORTATION & AVIATION SERVICES

- 6.2 Approval of an agreement with the San José Downtown Property Owners Association and the San José Downtown Association to provide services for the Downtown Property and Business Improvement District as specified in the agreement and as outlined in the Downtown Property and Business Improvement District Management Plan/Engineer's Report. CEQA: Not a Project. (Transportation)
(Deferred from 1/8/08 – Item 6.3)**

Documents Filed: (1) Memorandum from Director of Transportation James R. Helmer, dated January 2, 2008, recommending approval of Downtown PBID Agreement. (2) Supplemental Memorandum from City Attorney Doyle, dated January 10, 2008, providing additional language to the Agreement for Downtown Property and Business Improvement District Services and other City Services.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Pyle and carried unanimously, the agreement with the San José Downtown Property Owners Association and the San José Downtown Association to provide services for the Downtown Property and Business Improvement District as specified in the agreement and as outlined in the Downtown Property and Business Improvement District Management Plan/Engineer's Report was approved. (10-0-1. Absent: Constant.)

NOTICE OF CITY ENGINEER'S AWARD OF CONSTRUCTION PROJECTS

In accordance with Council Resolution No. 73532, the construction Contract Process Streamlining Policy approved on December 5, 2006, the following is a list of projects that were awarded or rejected by the Director of Public Works in December 2007:

AWARD:

<u>Project Name</u>	<u>Council District</u>	<u>Contractor</u>	<u>Contract Award Amount</u>	<u>Award Date</u>
Gateway East SNI Area Sanitary Sewer Improvements Phase II	5	K. J. Woods Construction, Inc.	\$414,000	12/13/07
Alviso and Biebrach Pools Rehabilitation Project	3 & 4	D. L. Falk Construction, Inc.	\$879,000	12/14/07
Traffic Signal Unit 2006	3	San José Signal Electric Construction, Inc.	\$385,000	12/19/07
Berryessa Creek Park Playground Renovation	4	Blossom Valley Construction, Inc.	\$508,142	12/20/07
Theodore Lenzen Park Improvement Project	6	Suarez & Munoz Construction, Inc.	\$539,718	12/20/07

OPEN FORUM

- (1) Ted Scarlett expressed concerns over traffic control.

ADJOURNMENT

The Council of the City of San José adjourned the meeting at 4:39 p.m. in memory of Carlos Sousa, who was tragically killed by the Siberian tiger that escaped its enclosure at the San Francisco Zoo on Christmas Day. (Campos)

Minutes Recorded, Prepared and Respectfully Submitted by,

Lee Price, MMC
City Clerk

rmk/1-15-08MIN

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